



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 9, 1998

Mr. Joe Bridges  
Assistant District Attorney  
Denton County  
Counsel to the Sheriff  
127 N. Woodrow Lane  
Denton, Texas 76205

OR98-2642

Dear Mr. Bridges:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119253.

The Denton County Sheriff's Office (the "Sheriff's Office") received two requests for the names and ages of all its employees who have been suspended or placed on any type of administrative leave since July 1, 1998 and a third request for the same information concerning employees who have been suspended or placed on administrative leave since July 1, 1997. You state that Denton County seeks to withhold the requested information from the requestors based on sections 552.102 and 552.108 of the Government Code.

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

You argue that the public release of the identity of employees on suspension or administrative leave would put such persons in a false light of having committed a sexual assault. You inform us that the Sheriff's Office has released to the public information about an inmate's allegation that a male detention officer sexually assaulted him, including the officer's age and the fact that the Sheriff's Office placed the officer on administrative leave with pay during the investigation of the allegation.

A prior open records decision has concluded that this office is not in a position to determine that the release of information places an individual in a false-light. Open Records Decision No. 579 at 6 (1990). Thus, section 552.102 does not incorporate the tort of false light privacy. Nor do we believe that the release of the information implicates the officers' common-law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.108 of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). You contend that the release of the requested names would interfere with the investigation of the allegations of sexual assault. You state that the investigation is not complete, nor have the allegations been confirmed.

We find that the Sheriff's Office has not established that the release of the information would interfere with the detection, investigation, or prosecution of crime. Further, we note that section 552.108 is inapplicable to the name of the alleged offender in a criminal investigation. *Id.* § 552.108(c); see *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). As we find that neither section 552.102 nor 552.108 is applicable, we conclude that the Sheriff's Office must release the requested information to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/mjc

Ref: ID# 119253

Enclosures: Submitted document

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